2002 UN Commission on Human Rights: Rights at Risk

"...in pursuing the objective of eradicating terrorism, it is essential that states strictly adhere to their international obligations and commitments to uphold human rights and fundamental freedoms. While we recognize that the threat of terrorism may require specific measures, we call on all governments to refrain from any excessive steps, which would violate fundamental freedoms and undermine legitimate dissent. ... The purpose of anti-terrorism measures is to protect human rights and democracy, not to undermine these fundamental values of our societies."[1]

INTRODUCTION

Since the attacks in the United States of America on 11 September 2001, many states have taken steps to enhance the protection of people within their territories from similar criminal acts, including enacting new legislation and other law enforcement measures. Amnesty International condemns unreservedly the attacks and calls in the strongest terms for those responsible to be brought to justice.

Under international human rights law, states have a duty to protect their populations from violent criminal acts. However, measures taken should not be excessive and must not undermine fundamental human rights standards.

Amnesty International is concerned that in their response to the attacks of 11 September, a number of states have introduced or are considering introducing measures that violate human rights standards. The challenge to states is not to promote security at the expense of human rights, but rather to ensure respect of human rights for all, including their own citizens, refugees and minorities. Amnesty International is particularly concerned that:

- the concept of "terrorism", increasingly used in new legislation, is often vague or broadly defined, thereby creating uncertainty about what conduct is prohibited and thus leaves scope for abuse by criminalizing peaceful activities including legitimate exercise of the right to freedom of expression and association;

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[1] Joint statement by Mary Robinson, UN High Commissioner for Human Rights, Walter Schwimmer, Secretary General of the Council of Europe, and Ambassador Gérard Stoudmann, Director of the OSCE Office for Democratic Institutions and Human Rights, 29 November 2001

Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 9 December 1998 ;

- Encourage the government to cooperate fully with the UN including issuing standing invitations to all the thematic mechanisms of the Commission to visit Colombia;

- Consider appointing a Special Rapporteur for Colombia as a complementary measure to support the work of the OHCHR;

- Request the High Commissioner for Human Rights to submit her report on Colombia to the 57th session of UN General Assembly.

INDONESIA

The promise of human rights reform has not been realised in Indonesia, nor have greater democratic freedoms prevented widespread human rights violations from being committed. The new government, like its predecessors, has demonstrated a reluctance to hold perpetrators to account, including those suspected of committing crimes against humanity and other serious crimes in East Timor in 1999. The government has not complied with the recommendation of the Commission[13] to investigate these crimes fully and establish an *ad hoc* human rights court without further delay. It has also failed to act on other recommendations in the Statement by the Chairperson of the 57th Session of the Commission in April 2001, including cooperating with the United Nations Transitional Administration in East Timor (UNTAET) on investigating serious crimes. Adequate measures have also yet to be taken to facilitate the voluntary repatriation of East Timorese refugees remaining in Indonesia.

Repression of independence movements in Aceh and Papua

The human rights situation in both Aceh and Papua has further deteriorated during 2001 as operations by the security forces intensified against pro-independence movements, both armed and peaceful. According to local human rights groups over 500 people, many of them civilians, were killed within six months of new security operations being launched in April 2001 in Aceh against the armed opposition group, the Free Aceh Movement (GAM). Scores of cases of unlawful detention, "disappearances" and torture, including rape, have also been reported.

[13] Chairperson's statement, Situation of human rights in East Timor (OHCHR/STM/CHR/01/01).

In Aceh and Papua, attacks by GAM and the Free Papua Movement/National Freedom Army (OPM/TPN) have led to reprisals by the Indonesian security forces. In this context, civilians have become the victims of extrajudicial executions and other human rights violations, and houses and means of livelihood have been destroyed in both provinces as a form of collective punishment. GAM and OPM/TPN are also responsible for serious human rights abuses, including unlawful killings and abductions.

Political leaders and other prominent members of civil society have been deliberately targeted, including leading pro-independence activists who were tried and imprisoned and several members of parliament and other local political leaders who were unlawfully killed. Lack of credible investigations into these cases have further eroded confidence in government initiatives to resolve the conflicts in Aceh and Papua, including the implementation of legislation on special autonomy for the two provinces.

Human Rights Defenders

The pattern of human rights violations against human rights defenders has become more deeply entrenched. Amnesty International documented over a dozen cases in which defenders, mainly in Aceh and Papua, were subjected to extrajudicial execution, unlawful arrest or torture. Threats and other forms of harassment by the police and military are also commonplace. Several activists were accused, and in one case formally charged, with defamation and other criminal offences for publicising human rights violations by the security forces. The increasingly dangerous environment for human rights defenders impedes their ability to carry out their legitimate work and has caused some to seek safety outside of the country.

Prisoners of conscience

In another marked set back, prisoners of conscience have been sentenced to terms of imprisonment for the first time since 1998. During 2001, ten labour and independence activists have been imprisoned for the peaceful expression of their views. Over 30 others are still on trial at the time of writing. Seven of the convicted prisoners of conscience were found guilty of crimes under the Hate-sowing Articles of the Criminal Code prohibiting the "spreading of hatred" against the government. This law was used extensively in the past to suppress dissent but had fallen out of use in recent years. Long-standing commitments to amend the Criminal Code to ensure its consistency with international standards have not yet been fulfilled. The Hate-sowing articles are among the provisions which Amnesty International has consistently recommended be repealed.

Prisoners of conscience and political prisoners have been convicted after unfair trials. The defendants are commonly denied access to legal representation, to medical attention and to members of their families. In many cases detainees have been coerced into making confessions, including through torture.

Impunity

The climate of impunity, which remains a root cause of the continued high level of human rights violations, was highlighted by the Committee against Torture in its review in November 2001 of Indonesia's initial report. The Committee attributed the situation to the lack of progress "in bringing to trial members of the military, the police or other state officials, particularly those holding senior positions, who are alleged to have planned, commanded and/or perpetrated acts of torture and ill-treatment".[14]

Repeated promises to hold human rights perpetrators to account have not been realised. Delays in setting up human rights courts, including two *ad hoc* human rights courts to consider cases of serious crimes committed in East Timor in 1999 and in Tanjung Priok in 1984[15], have led to serious doubts of the government's commitment to justice. There are also concerns that the fairness of any trials that do take place in the proposed human rights courts will be jeopardised, including because the legislation[16] under which they are to be established is not fully consistent with international human rights law and standards; there is no victim and witness protection program and judges and other relevant officials have not received adequate training in the practical implementation of international human rights law.

Doubts about the government's commitment to providing justice to the victims of serious crimes, including crimes against humanity in East Timor 1999, have been further reinforced because, while the President has approved the establishment of an *ad hoc* human rights court on East Timor, she has limited its jurisdiction such that the vast majority of crimes committed during 1999 cannot not be considered by it.[17] Moreover, the Indonesian authorities have consistently refused to cooperate with the serious crimes investigations being carried out by UNTAET, but rather has challenged the legality of the Memorandum of Understanding signed by UNTAET and the Indonesian Attorney General in April 2000. In the meantime, the government has not responded to over 30 indictments issued against individuals currently in Indonesia by the UNTAET Serious Crimes Unit.

[14] CAT/C/XXVII/Concl.3, 22 November 2001

[15] Scores of people were killed or "disappeared" when the Indonesian security forces opened fire on Muslim demonstrators in the Tanjung Priok area of Jakarta in September 1984 in the Tanjung Priok area of Jakarta. Around 200 people were arrested in connection with the protest of which around one half were brought to trial. Some were accused of acts of violence, but scores were sentenced to years in jail because of the peaceful expression of their beliefs.

[16] Law 26/2000 on Human Rights Courts.

[17] Presidential Decision 96/2001 limits the jurisdiction of the court to just the two months of April and September 1999 and to three out of 13 districts in East Timor.

Institutional and legal weakness, combined with political resistence, has prevented hundreds of cases of human rights violations in Indonesia itself, both past and present, from being resolved. Only a few cases were investigated during 2001, but they met with obstructions and did not result in trials.

Refugees

The situation has not yet been resolved for some 75,000 East Timorese refugees, who fled or were forcibly expelled from East Timor in September 1999, and are still in West Timor, Indonesia. Although there has been a significant increase in the number of people returning to East Timor since elections in East Timor in August 2001, the Indonesian government failed to provide adequate guarantees of security, including through disarming and disbanding militia, to permit the UN High Commissioner for Refugees (UNHCR) to return to West Timor.[18] There is concern that government plans to cease assistance to the remaining refugees early in 2002 will lead to chaotic repatriations, placing refugees and those seeking to assist them at undue risk, while increasing the misery of those who are unable or unwilling to return.

Cooperation with United Nations Mechanisms

Despite submitting its first periodic report to the Committee against Torture, Indonesia's record on cooperation with UN mechanisms has been inconsistent. Indonesia submitted its first report to the Committee against Torture (the Committee). However, few practical measures have been taken to implement the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. The Committee, which examined Indonesia's report in November 2001, expressed its concern about the large number of allegations of torture, and recommended measures, including the prohibition of torture in law; the establishment of an effective, reliable and independent complaints mechanism and prosecutions of all persons suspected of involvement in torture.

The Special Representative of the Secretary-General on Internally Displaced Peoples, Francis Deng, visited Indonesia in September 2001. However, the Indonesian government has not yet responded to a request, first made in 1993, from the Special Rapporteur on torture to visit Indonesia. The OHCHR was compelled to suspend its technical assistance program on justice with the Attorney General's office because of its concerns in relation to the limited jurisdiction of the *ad hoc* Human Rights Court on East Timor. Recommendations made previously by the Commission and by its thematic mechanisms have also not been fully implemented and Indonesia's commitment to ratify

[18] UNCHR was forced to evacuate West Timor in September 1999 after three of its staff were killed by pro-Indonesia East Timorese militia.

the International Covenant on Economic, Social and Cultural Rights, under the five year National Plan of Action on Human Rights, has not yet been fulfilled.

Amnesty International calls on the Commission to:

- Adopt a resolution condemning gross human rights violations in Indonesia, in particular the widespread extrajudicial executions, "disappearances", torture and unlawful detentions in the provinces of Aceh and Papua;

- Urge the Indonesian government to take effective steps to halt the human rights violations, including by reaching, without delay, negotiated settlements based on respect for human rights and international humanitarian law with representatives of independence movements in Aceh and Papua;

- Request the government to cooperate fully with the UN's human rights mechanisms and bodies, including by issuing standing invitations to all thematic mechanisms of the Commission to visit Indonesia, in particular the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders;

- Urge the Indonesian government to take all necessary measures to ensure the protection of human rights defenders from human rights violations, in accordance with its obligations under the *UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*;

- Urge the Indonesian government to release all prisoners of conscience and to retry political prisoners in new trials which meet with international standards for fair trial;

- Call on the government to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;

- Urge the Indonesian government to take concrete steps to end impunity, including by strengthening existing mechanisms to promptly and impartially investigate all allegations of human rights violations and to bring alleged perpetrators to justice in accordance with international standards for fair trial;